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In re Application of
O'HARTE, et al.
Application No.: 09/937,687
PCT No.: PCT/GB00/01089
Int. Filing Date: 29 March 2000
Priority Date: 29 March 1999
Attorney Docket No.: 8830-8
For: PEPTIDE

DECISION ON PETITION

UNDER 37 CFR 1.181

This decision is in response to applicant's petition filed in the United States Patent and Trademark Office (USPTO) on 09 May 2002.

BACKGROUND

On 29 March 2000, applicant filed international application PCT/GB00/01089, which claimed priority of an earlier application filed 29 March 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 05 October 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 29 September 2001.

On 28 September 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the International Search Report; a First Preliminary Amendment and an unexecuted combined declaration and power of attorney.

On 13 November 2001, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) and a NOTIFICATION OF A DEFECTIVE OATH OR DECLARATION (Form PCT/DO/EO/917) informing applicant of the need to provide a signed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date as well as a sequence listing for the present application.. In addition, applicant was advised of the need to provide payment of the \$65.00 surcharge for providing an oath or declaration later than thirty months from the priority date. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and

Application No.: 09/937,687

payment of fees.

On 09 May 2002, in response to information provided by the PCT Help Desk, applicant filed the present petition accompanied by an executed combined declaration and power of attorney, a sequence listing disk, a copy of a transmittal letter dated 08 January 2002 and a return postcard receipt with a 08 January 2002 USPTO date stamp which lists the attorney docket number, title and applicant and identifies the items to be filed as including "Response to Notification of Missing Requirements; Declaration and Power of Attorney; Sequence Listing Disk With Amendment and Statement (37 CFR 1.821 (f)(g)) and Check No. 51161 (\$65.00)."

DISCUSSION

A review of the application file reveals that the NOTIFICATION OF MISSING REQUIREMENTS was mailed by the USPTO on 13 November 2001, addressed to the mailing address provided in the international application (no new correspondence address was provided in the transmittal letter for entry into the national stage in the United States submitted 28 September 2001). It is noted that the transmittal letter purportedly filed 08 January 2002 identified the application as "09/937,786." A search of that file did not reveal the filed papers therein. However, the evidence filed with the petition, namely the date stamped postcard receipt and information contained therein is convincing that a response including a combined declaration and power of attorney was filed on 08 January 2002. Thus, it is appropriate to withdraw the holding of abandonment.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is GRANTED.

The application has an international filing date of 29 March 2000 under 35 U.S.C. 363 and a date of 08 January 2002 under 35 U.S.C. 371(c).

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision, that is, for mailing of a filing receipt and a NOTIFICATION OF ACCEPTANCE OF APPLICATION (Form PCT/DO/EO/903) which identifies a date of 08 January 2002 under 35 U.S.C. 371(c).



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